

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) Case No. 4:18CR3070
)
 Plaintiff,)
)
vs.)
)
JOSEPH L. MELTON,)
) Lincoln, Nebraska
 Defendant.) November 8, 2018

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE CHERYL R. ZWART
UNITED STATES MAGISTRATE JUDGE

A-P-P-E-A-R-A-N-C-E-S

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produced with computer.

1 (At 1:35 p.m. on November 8, 2018, with counsel for the
2 parties and the defendant present:)

3 THE COURT: We are on the record in Case Number
4 4:18CR3070, United States of America versus Joseph L. Melton.

5 Counsel, please enter your appearance.

6 MR. MOLSEN: Your Honor, please show the appearance
7 of Matt Molsen for the government. And then seated with me at
8 counsel table is Cory Shelton, the case agent.

9 THE COURT: All right.

10 MR. FERDICO: Chris Ferdico on behalf of the
11 defendant with the Berry Law Firm.

12 THE COURT: Okay.

13 MR. KALEMKIARIAN: Also, please enter the appearance
14 of Justin Kalemkiarian on behalf of Mr. Melton.

15 THE COURT: All right. Mr. Melton, you are here
16 today for your hearing on the motion to suppress that was filed
17 by your attorneys on your behalf.

18 Are the parties ready to proceed?

19 MR. MOLSEN: Yes, Your Honor.

20 MR. FERDICO: Yes, Your Honor.

21 THE COURT: And do you want opening statements at all
22 at this time?

23 MR. MOLSEN: No, Your Honor.

24 MR. FERDICO: No, Your Honor.

25 THE COURT: All right. Let me ask a quick question.

1 As I read the briefs from the defendants, we're talking about
2 the alleged Fourth Amendment violation for the search, and on
3 the statements is the -- is there an argument about the
4 statements, any statements?

5 MR. MOLSEN: It was mentioned in the motion briefly
6 but not --

7 THE COURT: It was mentioned, and then you briefed it
8 on the behalf of the government as saying essentially it was
9 mentioned only briefly and it -- the statements weren't a
10 violation of the Fifth Amendment, and since there was no Fourth
11 Amendment violation, they are not fruit of the Fourth Amendment
12 violation either.

13 But I wanted to ask the defendants: Are we going down a
14 Fifth Amendment, Fourth Amendment, or no -- nothing on the
15 statements?

16 MR. FERDICO: It's a Fourth Amendment argument for
17 all.

18 THE COURT: Okay. For -- so we're only dealing with
19 the Fourth today.

20 MR. FERDICO: Yes. Yes, ma'am.

21 THE COURT: Got it. Thank you. All right. And
22 sequestering witnesses? Does the government have more than one
23 witness?

24 MR. MOLSEN: Just -- I'll have Cory testify. His
25 will be pretty brief. The main testimony is going to come from

1 Greg, the inspector, and I'll have him up first.

2 THE COURT: Okay.

3 MR. KALEMKIARIAN: Go ahead, Chris.

4 Judge, the defendant would ask for sequestration of
5 witnesses.

6 THE COURT: If there's anything more than the -- than
7 Mr. Shelton, who is the representative for the government, and
8 who -- what was your inspector?

9 MR. MOLSEN: Greg Kubert.

10 THE COURT: Okay. Is there any other witnesses?

11 MR. MOLSEN: No, Your Honor.

12 THE COURT: Okay. Then I don't think there's anybody
13 to sequester. All right. Assuming that we only have those two
14 witnesses, we can proceed.

15 MR. MOLSEN: Okay.

16 THE COURT: Go ahead.

17 MR. MOLSEN: Your Honor, the government would call
18 Inspector Greg Kubert.

19 THE COURT: All right. Mr. Kubert.

20 COURTROOM DEPUTY: Go around that way, and go ahead
21 and have a seat.

22 MR. KALEMKIARIAN: Judge, before we get to the
23 questioning, I'd like permission for Mr. Melton to have
24 handcuffs removed so that he can take notes.

25 THE COURT: Any reason the marshals know as to that

1 he's a specific danger I need to be worrying about?

2 DEPUTY MARSHAL: No. We can undo one.

3 THE COURT: All right. Thank you.

4 MR. KALEMKIARIAN: That's fine.

5 THE COURT: Are you right-handed, sir, or
6 left-handed?

7 THE DEFENDANT: I'm right-handed.

8 THE COURT: All right. Thank you.

9 COURTROOM DEPUTY: Please state your full name for
10 the record and spell your last name for me.

11 THE WITNESS: Greg Kubert, K-U-B-E-R-T.

12 COURTROOM DEPUTY: Raise your right hand.

13 UNIDENTIFIED MALE SPEAKER: Thank you.

14 GREG KUBERT, PLAINTIFF'S WITNESS, SWORN

15 THE COURT: You may proceed.

16 MR. MOLSEN: All right. Thank you.

17 DIRECT EXAMINATION

18 BY MR. MOLSEN:

19 Q. Sir, how are you currently employed? How are you
20 currently employed?

21 A. I'm employed as an industry operations investigator with
22 ATF.

23 Q. Okay. And how long have you worked in that capacity?

24 A. Fourteen years.

25 Q. And what are your duties as an industry operations

1 inspector for ATF?

2 A. We carry out ATF's regulatory mission, primarily with the
3 firearms and explosives industries.

4 Q. Okay. Do you oversee regulation of people who hold
5 federal firearms licenses?

6 A. I do.

7 Q. Okay. And is that part of the Department of Justice
8 regulation of the firearms industry?

9 A. It is.

10 Q. Okay. And when you're overseeing the -- the federal
11 firearms licenses, who is it who holds those federal firearms
12 licenses?

13 A. People that apply to either deal, manufacture or import
14 firearms.

15 Q. Okay. And so sellers and manufacturers primarily?

16 A. Correct.

17 Q. Okay. Have you heard of the -- the term Class III items?

18 A. Yes.

19 Q. And what are Class III items?

20 A. Class III items are what folks in the industry commonly
21 refer to as NFA weapons. National Firearms Act weapons are
22 things like silencers, machine guns, short barreled rifles,
23 that have a higher level of regulation as compared to regular
24 rifles, shotguns and handguns.

25 Q. And are -- is there additional regulation that encompasses

1 those types of weapons?

2 A. There is.

3 Q. For -- let's say an average person wants to own a silencer
4 or a short barreled rifle. What must they do in order to do
5 that?

6 A. Okay. They -- they have two options. An individual would
7 be able to make one themselves. The other option would be to
8 purchase one from a Class III or NFA dealer.

9 Q. Okay. And those NFA dealers, are they -- are they among
10 the people who receive federal firearms licenses?

11 A. Yes. In order to be an NFA dealer, you must first have an
12 FFL.

13 Q. Okay. And those -- so when the -- let's say the person
14 wants to buy it from someone with a federal firearms license or
15 an FFL. How does that process work? What do they do?

16 A. Okay. The process would start with, you know, them
17 finding something that they either wanted to purchase or that
18 they wanted to have made for them, and then when -- if the
19 dealer needs to get it ordered in, they've actually have --
20 need to fill out a Form 3 to get it in from the supplier,
21 because the movement of all these items are tracked
22 individually. And then once it's at the store, the customer
23 and the dealer would complete an ATF Form 4, which is the
24 transfer from the dealer to the individual. That Form 4 is
25 sent in with a \$200 tax payment.

1 The NFA branch takes -- it reviews the documentation,
2 makes sure it's complete. And then once it's approved, they
3 actually put a physical stamp on it, return it to the dealer.
4 And then the dealer would be able to complete the transfer to
5 the customer by having the customer come in, fill out ATF Form
6 4473, which is the standard form for any firearm transaction.
7 And then after -- after that's completed, the -- the NFA item
8 and the stamped Form 4 would be handed over to the customer.

9 Q. Okay. And so we're talking about a couple different forms
10 here. So if -- if average Joe citizen wants to purchase a
11 silencer, they have to complete the Form 4; is that correct?

12 A. Correct.

13 Q. And does that track -- the individual item, the silencer
14 or the short barreled rifle or whatever it may be, is that
15 going to be identified by serial number on that Form 4?

16 A. Yes.

17 Q. And is that specific item then registered to the
18 purchaser? I mean, can you go back and track, like, who's the
19 owner of this item?

20 A. Yes, yes.

21 Q. And then -- so the purchaser has to pay the \$200 tax; is
22 that correct?

23 A. Correct.

24 Q. And then once that process is approved, then they have to
25 complete the usual paperwork that a person would do when

1 purchasing any firearm?

2 A. Correct.

3 Q. Okay. And you mentioned the Form 4473. Is that that --
4 that process when a person is purchasing any firearm at all?

5 A. Correct.

6 Q. Okay. The Form 4473, what does that entail? Like, what's
7 the purpose of that form?

8 A. It's the over-the-counter firearms transaction record that
9 all FFLs are required to have completed anytime a firearm is
10 sold. The -- the front of the form is filled out by the
11 customer with their identifying information and their
12 declaration that they're not prohibited from possessing
13 firearms, and then the remainder of the form is completed by
14 the dealer where they document that the background check was
15 conducted, what gun by make, model, serial number, caliber was
16 sold, and then the date that the transaction was completed.

17 Q. Would the -- you mentioned it's to -- that it asks the
18 person questions to see if they're not prohibited; is that
19 right?

20 A. Correct.

21 Q. Is that generally the main purpose of that form, to make
22 sure the purchaser is not a prohibited person?

23 A. It's one of the main purposes, yes.

24 Q. Okay. And then a background check is done?

25 A. Correct.

1 Q. Okay. How is that -- how is that accomplished?

2 A. In the State of Nebraska, there's a variety of ways that
3 it's handled. The first way is if the customer has a Nebraska
4 firearms purchase certificate or a Nebraska concealed handgun
5 permit, the licensee doesn't need to do a -- an additional
6 background check. They can accept that permit as proof that
7 the person would be legally able to possess firearms. They
8 document that information on the 4473, you know, the permit
9 number.

10 The other option would be on the sale of a rifle or
11 shotgun, the dealer would be able to call into NICS, the
12 National Instant Background Check System administered by the
13 FBI, to have them run a background check, you know, to figure
14 out if they could transfer the gun. And then in the case of
15 NFA firearms, during the Form 4 process if the transfer -- if
16 the transfer is to an individual person --

17 Q. Uh-huh.

18 A. -- the background check is conducted during that time.

19 Q. Okay.

20 A. If the transfer is to -- well, prior -- prior to July of
21 2016, if the transfer is to a different entity, like a trust or
22 a company, the background check is not conducted until the 4473
23 is completed by the trust representative there to pick it up.

24 Q. Okay. So if you're doing an inspection on a company who
25 manufactures and sells silencers, are those going to be the

1 primary forms that we're -- that you'd be looking at, the Form
2 4s and then the 4473s?

3 A. I'm definitely looking at those. I'd also be looking at
4 Form 2s, which is the manufacturer's declaration of here's what
5 I've manufactured, here's what I've made. And then Form 3
6 would be if they had ordered in any NFA weapons --

7 Q. Okay.

8 A. -- from other suppliers. So those would be the main ones,
9 yes.

10 Q. Okay. So just making sure I have it right, if someone is
11 manufacturing what we've called NFA items, items like
12 silencers, for example, they complete a Form 2 every time a
13 silencer is produced, then?

14 A. Yeah. By the end of the day that the -- or that the
15 manufacture is complete, a Form 2 is submitted, and that's the
16 manufacturer's notification that, hey, I made this, and that's
17 submitted to the NFA branch. And usually they review,
18 document, put it into the system, and return it back as
19 received to the licensee within a couple weeks. Also at that
20 time the manufacturer needs to, in their manufacturer's record,
21 record that on this date I made the silencer, the serial
22 number, this caliber.

23 Q. Okay. And on the Form 2 is the serial number of the --
24 each individual item documented?

25 A. Yes, it is.

1 Q. Okay. So that's the Form 2. And you said a Form 3. So
2 if -- if a person holds a federal firearms license, are they
3 able to purchase some of those more regulated items such as
4 silencers from other federal firearms licensed dealers?

5 A. Yes, they are. And the purpose of the Form 3 is so that
6 when it goes from a distributor to a dealer that they don't
7 have to pay the \$200 tax each time it moves.

8 Q. Okay. And then the Form 4 would be when the individual
9 customer purchases it from someone who's a federal firearms
10 licensed dealer?

11 A. Correct.

12 Q. Okay. And then we have the 4473s. That's the background
13 check, essentially?

14 A. Correct.

15 Q. Okay.

16 THE COURT: I have to ask: What is Form 1? We have
17 2, 3 and 4.

18 MR. FERDICO: Judge --

19 THE WITNESS: Form 1?

20 MR. FERDICO: -- you don't want to know.

21 THE WITNESS: Form 1 is when an individual decides to
22 make their own. So you would be able to make your own
23 silencer --

24 THE COURT: Oh, okay.

25 THE WITNESS: -- if you wanted to, but you would have

1 to --

2 THE COURT: So there really is a Form 1.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: I just thought --

5 THE WITNESS: Yeah.

6 THE COURT: -- maybe in the government's infinite
7 wisdom, it skipped one so -- okay. Got it.

8 BY MR. MOLSEN:

9 Q. Okay. When you conduct an inspection of a place that
10 manufactures silencers, what -- I think we talked a little bit
11 before. Was there anything else you look for other than the
12 Form 2s, 3s, 4s, and the 4473s?

13 A. Well, I mean, we're looking at the manufacturing process
14 to make sure that the records that are required to be
15 maintained are being maintained. A manufacturer is also
16 required to submit a annual manufacturing and exportation
17 report -- I don't remember the acronym, but Annual Firearms
18 Manufacturing and Exportation Report which is -- they're
19 quantifying for statistical purposes just how many firearms
20 they manufactured and put into commerce during a calendar year
21 and the ATF just uses that for statistical purposes. There's
22 no -- things are not identified by serial number.

23 Q. Okay. And then when you're choosing a location for an
24 inspection, how are locations chosen?

25 A. I mean, there's a variety of methods. For a compliance

1 inspection usually at the headquarters level there's some type
2 of program for the year or whatever where, you know, there's a
3 particular program where, okay, we're going to try to hit all
4 the pawn shops in your state in a four-year period or try to do
5 all the manufacturers or all the high volume dealers, and so
6 that's the majority of the compliance work, is to satisfy some
7 of those programs.

8 Q. Is your -- your office is in Omaha; is that correct?

9 A. Yes, sir.

10 Q. And how big of an area do you cover?

11 A. We cover all of Nebraska and most -- or all of Iowa as
12 well.

13 Q. Okay. And in that area do you have an idea of how many
14 people or how many federal firearms licenses there are out
15 there?

16 A. In Nebraska there's over 800.

17 Q. Okay.

18 THE COURT: Eight hundred?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: All right.

21 BY MR. MOLSEN:

22 Q. So then when there's 800 federal firearms licenses, are
23 there people who are not inspected on a regular basis?

24 A. Yes.

25 Q. Okay. Are -- is that influenced -- like, how frequently

1 someone has been inspected, is that a factor to consider as
2 well?

3 A. Yes. You know, the -- there's, you know, five to six of
4 us in the Omaha office that cover these 800, and so there's a
5 resource issue with that.

6 Q. Do you -- does ATF occasionally receive tips from the
7 public as to certain people who have federal firearms licenses
8 who may not be complying?

9 A. Yes, we do.

10 Q. Is that a factor that may motivate you to conduct a
11 compliance inspection?

12 A. It is a -- yeah. It's a factor that would lead to the
13 area supervisor deciding whether or not to issue an inspection.

14 Q. Okay. On August 24th of 2017, did you have the occasion
15 to conduct an inspection of a person -- or a business that held
16 a federal firearms license?

17 A. Yes, I did.

18 Q. And which business were you looking at that day?

19 A. It was Leadfoot, LLC.

20 Q. And what type of inspection was this?

21 A. It was a compliance inspection.

22 Q. And was this an unannounced inspection?

23 A. It was unannounced.

24 Q. Okay. On this occasion had you received a warrant in
25 order to conduct that inspection?

1 A. No.

2 Q. And you said it was Leadfoot, LLC; is that correct?

3 A. Correct.

4 Q. When a person -- when you have a business like that who
5 obtains federal firearms licenses, are there owners who are
6 associated with the federal firearms license?

7 A. Yes.

8 Q. Okay. And who were the listed owners for this license?

9 A. The responsible persons on the license were Joseph Melton
10 and Robert Dahlgren.

11 Q. Okay. How do you spell Robert --

12 THE COURT: What was Robert's last name again?

13 THE WITNESS: Dahlgren.

14 THE COURT: Okay. Thank you.

15 BY MR. MOLSEN:

16 Q. How do you spell that, if you know?

17 THE COURT: Is it D-a-h-l-g-r-e-n?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: All right.

20 BY MR. MOLSEN:

21 Q. And in this case had you received indications or any tips
22 that Leadfoot, LLC, had not been in compliance?

23 A. We had.

24 Q. Okay. And without mentioning names, what type of
25 information had you received?

1 A. An anonymous call -- or a caller called in to report
2 concerns about Leadfoot, and those calls were taken by special
3 agents in our office, and then that information was -- was
4 brought over to me.

5 Q. And what was your understanding of the -- of the nature of
6 the complaints?

7 A. That -- that straw purchases were being conducted, that
8 fire -- or that manufacturing was being conducted off site,
9 that there were fully automatic guns on site. That was the
10 gist of it.

11 Q. And when you say fully automatic weapons, those are what
12 would be called Class III items; is that correct?

13 A. Yeah. It would be defined as a machine gun.

14 Q. With the type of federal firearms license that Leadfoot
15 had, would they be allowed to possess fully auto -- or full
16 auto rifles?

17 A. They would be allowed to. When I checked, though, they
18 didn't have any registered to them.

19 Q. Okay. And then after receiving that information did you
20 check to see when -- when the inspection had last been done?

21 A. Yes, I did.

22 Q. Okay. Was -- when was F- -- when was the FFL or the
23 federal firearms license issued for Leadfoot, LLC?

24 A. 2013.

25 Q. And when a person applies for a federal firearms license

1 to manufacture firearms, is there an inspection that's done as
2 part of that process?

3 A. There is. A qualification inspection is conducted.

4 Q. And what's involved in a qualification inspection?

5 A. In a qualification inspection we verify that the
6 information put on the application is correct, we verify that
7 they meet the statutory requirements to obtain an FFL, and then
8 we do a site visit, see where business is going to be
9 conducted, talk to the licensee -- or talk to the applicant
10 about what it is they're planning on doing, and then we will
11 provide, like, a review of the different forms and the records
12 that are required to be kept.

13 Q. Okay. And was that done in this case?

14 A. It was.

15 Q. Do you recall the date that that inspection was done?

16 A. Not off the top of my head. It was sometime in 2013.

17 Q. In 2013?

18 A. Yes, sir.

19 Q. Okay. Would it be in your report, by chance?

20 A. It would be referenced in my report.

21 Q. Okay. Do you have your -- a copy of your report with you?

22 A. I do.

23 MR. MOLSEN: Okay. Your Honor, may he be allowed to
24 examine his report?

25 THE COURT: Any objection?

1 MR. FERDICO: No objection.

2 THE COURT: All right. You may.

3 BY MR. MOLSEN:

4 Q. Have you had a chance to review your report?

5 A. Yes.

6 Q. Okay. And when was the -- that init- -- or that first
7 inspection done?

8 A. December 11th, 2013.

9 Q. Okay. Does ATF maintain records of -- every time an
10 inspection is done of a person who holds a federal firearms
11 license?

12 A. Yes.

13 Q. And according to ATF records had any inspection been
14 completed on Leadfoot, LLC, since that -- that inspection in
15 December of 2013?

16 A. No.

17 Q. Okay. So from December of 2013 to August of 2017, no
18 inspections?

19 A. That's correct.

20 Q. Okay. And then on the August 2017 inspection, what type
21 of inspection was that?

22 A. Compliance.

23 Q. Okay. When you conduct a compliance inspection, do you
24 arrive during normal business hours?

25 A. Yes, we do.

1 Q. And how do you know what the business hours are going to
2 be for a business like Leadfoot?

3 A. So when they apply, they have to identify their business
4 hours, and on the original application I believe it was eight
5 to five Monday through Friday, and then on their renewal
6 application they're able to update their business hours. And
7 then also, you know, we just look, and, you know, if we see
8 them at the store or if they're at the store working, that --
9 that would be their business hours.

10 Q. Okay. And did you arrive during the listed business hours
11 for the -- in this case?

12 A. Yes.

13 Q. Okay. Do you recall what time it is you first arrived in
14 Holdrege, Nebraska, on August of 2017?

15 A. To begin the inspection it was like 8:20-something in the
16 morning.

17 Q. Okay. And who -- who went with you for this inspection?

18 A. Pardon?

19 Q. Who went with you to complete the inspection?

20 A. Okay. IOI Brett Vickers was with me -- he was in on
21 training status -- and then Special Agent Cory Shelton and
22 Special Agent Tony Sorenson.

23 Q. Okay. And you said there was another industry operations
24 inspector or IOI with you?

25 A. Correct.

1 Q. And why was he there?

2 A. He was there, number one, because he was my trainee at the
3 time.

4 Q. Okay.

5 A. And, number two, it was a great introduction for how NFA
6 inspections would look.

7 Q. Okay. Would you ordinarily do something like this by
8 yourself?

9 A. Yes.

10 Q. Okay. And then on this occasion Special Agents Cory and
11 Tony were with you; is that correct?

12 A. Correct.

13 Q. Whose idea was it for them to come with?

14 A. It was my idea.

15 Q. And why did you ask them to accompany you?

16 A. Primarily, when I had started my preinspection work and
17 had noted arrests in Mr. Melton's past, just for my own safety
18 I wanted to make sure that we had a special agent with us.

19 Q. Okay. And do people in your role, as the industry
20 operations inspectors or IOIs, as -- in your role as an
21 inspector, do you carry a firearm or weapons?

22 A. No, we don't.

23 Q. Okay. Do IOIs have the authority to make arrests?

24 A. No, we don't.

25 Q. Do IOIs carry handcuffs?

1 A. No.

2 Q. Are IOIs permitted to seize firearms or any other evidence
3 that they come across?

4 A. No, we are not.

5 Q. Okay. If you're -- let's say you're conducting an
6 inspection and you come across a weapon that's just on its face
7 illegal to possess. What do you do in that situation?

8 A. Document what we find and then make arrangements for a
9 special agent to pick it up.

10 Q. Okay. Would you -- and let's say if you were by yourself
11 in some town, would there be occasion where you might call the
12 police and ask them to seize it as well, or is that not very
13 common or --

14 A. In 14 years I haven't --

15 Q. Okay.

16 A. -- run into that.

17 Q. Okay. So primarily document it and then notify the
18 agents, and they take care of it later?

19 A. Correct.

20 Q. Okay. When you first arrived at the Leadfoot, LLC, on
21 August 24th, was the business open or closed at that point?

22 A. The door was locked.

23 Q. Okay. Did you knock on the door or try to get anybody's
24 attention inside?

25 A. Yeah. We knocked on the door, and then we went to the

1 other entrance and knocked on that door as well, and there was
2 a sign indicating to UPS and FedEx deliveries to call a number
3 for Leadfoot.

4 Q. Okay. And what did you do at that point?

5 A. I called that number.

6 Q. Okay. And what happened then?

7 A. Initially it went to voice mail, and then Joe Melton had
8 called me back.

9 Q. Okay. Do you know about how much time elapsed between
10 leaving the voice mail and calling back?

11 A. Five, ten minutes.

12 Q. Okay. Once Mr. Melton called you back, did you speak with
13 him at that time?

14 A. Yes.

15 Q. And what was discussed then?

16 A. I let Mr. Melton know that I was at the licensed premises
17 or at his store to conduct a compliance inspection, and he
18 informed me that he was in Aurora, Colorado, visiting family.

19 Q. Okay. And what did you do when he said that he was in
20 Colorado?

21 A. I -- well, I asked if the other responsible person -- if
22 Mr. Dahlgren would be available or, if that wasn't a
23 possibility, you know, if he could confirm that he was in
24 Colorado, I would just -- we'd reschedule it for the next week.

25 Q. Okay. And then Dahlgren, that was the other responsible

1 person listed on the federal firearms license?

2 A. Correct.

3 Q. And did Mr. Melton indicate whether or not Mr. Dahlgren
4 might be able to complete the inspection or let you in to
5 complete the inspection?

6 A. I'm not sure if it was during this initial conversation,
7 but during conversations with Mr. Melton, he had shared that
8 Mr. Dahlgren wasn't involved in the day-to-day operation of the
9 business and wouldn't know where anything was.

10 Q. Okay. And then what was the response when you asked him
11 to send you some sort of verification that he was in Colorado?

12 A. He said he would.

13 Q. Okay. And what type -- what were you looking for?

14 A. I told him to, you know, go outside and take a picture of
15 a mountain or some other landmark just to confirm that he was
16 in Colorado and then we could reschedule.

17 Q. Did you receive a response?

18 A. I did not.

19 Q. Okay. What happened next?

20 A. While I was waiting for a response, I did reach out to
21 Mr. Dahlgren and I -- I think initially I did leave a voice
22 mail, and I had sent a follow-up text to Mr. Melton asking --
23 you know, letting him know I hadn't received anything. And
24 when I had called and actually got ahold of Mr. Dahlgren --
25 excuse me, he had let me know that he didn't have a key to the

1 building and he didn't -- wasn't involved in the day to day and
2 he didn't have any idea where the records would be.

3 Q. Okay. And then after speaking with Mr. Dahlgren, when was
4 the next time you had contact with Mr. Melton?

5 A. I had another -- I had another discussion with
6 Mr. Dahlgren, who had called to confirm that Joe -- or that
7 Mr. Melton got ahold of me, and he had not, and then around
8 two o'clock Mr. Melton called my phone, and we talked.

9 Q. Okay. So that's 2 p.m.?

10 A. Yes, sir.

11 Q. So what was occurring from about 8:20 in the morning until
12 2 p.m. during that time?

13 A. Okay. During that time, you know, we were trying to
14 confirm if Mr. Melton was in Colorado. While we were in
15 Holdrege, we went -- Special Agent Shelton and I, we walked
16 around and, you know, tried the doors again.

17 We visited buildings that we understood Mr. Melton was an
18 owner and talked with people there, if they had seen him, and
19 they had reported that they'd seen him that morning -- or that
20 they saw him last night. Sorry. And then, let's see, we went
21 to the gym that was open, unlocked, and music was playing, but
22 no one was there. And then while we were looking, we also had
23 looked up to see what vehicles were registered to Mr. Melton
24 and were able to find those in the adjacent blocks.

25 Q. Okay. Did you travel to Holdrege that day for the purpose

1 of conducting that compliance inspection?

2 A. We had actually traveled the day before and completed an
3 inspection further west --

4 Q. Okay.

5 A. -- and then the plan was to start Leadfoot the morning of
6 the 24th.

7 Q. I see. How far of a drive is it from your office in Omaha
8 out to Holdrege, Nebraska?

9 A. About three hours.

10 Q. Okay. So not a small task to drive out there?

11 A. Right.

12 Q. Okay. Three hours one way?

13 A. Three hours one way, correct.

14 Q. Okay. Had Mr. Dahlgren arrived and if he had keys to open
15 it, would that -- would that have satisfied your interest as
16 far as being able to get into the business to complete the
17 inspection?

18 A. Yes. Yeah, we would have been able to get started.

19 Q. Okay. Would it have been necessary for Mr. Dahlgren to
20 stay there, or would you have been okay just conducting an
21 inspection on your own?

22 A. It would not have been necessary.

23 Q. Would it be his option, essentially?

24 A. Correct.

25 Q. Okay. Same with Mr. Melton?

1 A. Correct.

2 Q. Okay. When did the inspection eventually start?

3 A. A little after three o'clock.

4 Q. Okay. That same day?

5 A. Yes.

6 Q. Okay. When you spoke with Mr. Melton, did he ever
7 eventually tell you where he was?

8 A. Yeah. The two o'clock call Mr. Melton had advised that he
9 had been at his sister's in Lexington, Nebraska, about 45 miles
10 away -- or 45 minutes away.

11 Q. Did he explain to you why it was that he told you he was
12 in Colorado?

13 A. He didn't explain the Colorado. He had explained that he
14 was at his sister's because after I'd called to let him know we
15 were going to conduct an inspection, he had panicked and went
16 with his sister to her house in Lexington.

17 Q. Okay. Did he explain why he was panicked?

18 A. He was concerned that his records were not in good shape
19 and that -- you know, that we would find discrepancies at
20 the -- at the inspection.

21 Q. Okay. And is this conversation that you -- you mentioned
22 was over the phone?

23 A. Yes, sir.

24 Q. Okay. Once the inspection starts, how was it you were
25 able to gain entry to the building?

1 A. We met Mr. Melton. He was walking his dog out in front of
2 the building. And so we were on the other side of the street,
3 met him -- or across the street, introduced myself, met him,
4 and he let us into the building.

5 Q. Okay. And then once you were let into the building, what
6 happened then?

7 A. I explained to Mr. Melton what the process was, you know,
8 that we'd be conducting an inventory, reviewing his records,
9 kind of giving him the outline of here's what an inspection is,
10 here's what we need to do.

11 Q. And then did you begin the inspection at that time?

12 A. Yes.

13 Q. And how long -- how long did the inspection take?

14 A. So from three -- I think we were there till about six or
15 seven, and during that time we'd attempted to initiate an
16 inventory, and then we had attempted to figure out where the
17 inventory was because we had found, you know, a lot of things
18 were in the midst of production.

19 Q. Okay. Did you complete the inspection that day?

20 A. No.

21 Q. Okay. So you were there until maybe six, possibly seven
22 that night?

23 A. Correct.

24 Q. Okay. Did Cory -- did Special Agent Cory Shelton and
25 Special Agent Tony -- was it Winkler, or was it the other --

1 A. Sorenson.

2 Q. Sorenson. Okay. Tony Sorenson. Did they stay there the
3 entire time?

4 A. They were there for the first couple hours. Tony and
5 Brett were working on the gun to -- gun-to-book inventory while
6 Special Agent Shelton and I were speaking with Mr. Melton about
7 where things were, kind of getting the lay of the land, his
8 inspection -- or his manufacturing process, just so I could
9 wrap my head around what I was looking at.

10 Q. Okay.

11 A. But they -- after about a couple hours, Special Agents
12 Shelton and Sorenson left.

13 Q. And why is it they left then?

14 A. I didn't -- I did not have the concerns for my -- for our
15 safety that I had going into it because we were able to work
16 with Mr. Melton and at the point -- after a couple hours we
17 were kind of at the point of just that concern was abated, and
18 so it was more -- more of the bookwork stuff that IOI Vickers
19 and I do --

20 Q. Okay.

21 A. -- and so they didn't need to be there for that.

22 Q. During the time that Special Agents Cory and -- or Shelton
23 and Sorenson were there, to your knowledge, did they ask any
24 questions of Mr. Melton?

25 A. They did.

1 Q. Okay. Were you present for those?

2 A. Yes.

3 Q. Okay. Were you able to complete the inspection on the
4 24th that day?

5 A. No.

6 Q. Okay. What -- so you started at three. You leave about
7 six. Did you go home, or what happened then?

8 A. We stayed at a nearby hotel.

9 Q. Okay. When did the inspection resume?

10 A. That Friday morning, the 25th.

11 Q. And before you left, did you explain to Mr. Melton that
12 you'd be back the next day?

13 A. Yes.

14 Q. Okay. Did you ask him to meet you there to let you in
15 again?

16 A. Yeah. We had discussed and agreed upon a time where we'd
17 get going again in the morning.

18 Q. Okay. And when you're doing an inspection like this, are
19 you trying to match up the items that are -- the inventory with
20 the paperwork?

21 A. Correct.

22 Q. And what else are you doing?

23 A. So trying to match up what's in inventory with the
24 paperwork, trying to match up what -- what the licensee says he
25 has manufactured or has in stock, what he's told our NFA branch

1 what he has versus what's actually there. We'd also be
2 reviewing the transaction paperwork to make sure that every
3 time a silencer or gun was sold that a 4473 was completed.
4 We'd go through all the 4473s to make sure that they're
5 completed correctly, that the information is accurate,
6 complete, and that the background checks were conducted.

7 Q. And in a business such as this of that size, if everything
8 was reasonably organized and generally in compliance, how long
9 would you anticipate an inspection like that might last?

10 A. Yeah. If things were good to go, I mean, based on the
11 volume and the special nature of the silencer manufacturing
12 business, I had budgeted a day, day and a half, to get
13 everything done.

14 Q. Okay. And how long did this one take?

15 A. Well, we -- so we -- we got a late start on Thursday, and
16 then IOI Vickers and I worked Friday. Started in the morning,
17 and we -- I think we went to mid afternoon. And then that
18 following week in addition to, like, my other caseloads, work
19 on my other caseloads, you know, we were working on compiling
20 what do we know, what do we need to get confirmed? And then so
21 we had to return a week later, on the 1st.

22 Q. Okay. So you were there the 24th and the 25th, and then
23 you come back on September 1st, the following week?

24 A. Correct.

25 Q. Okay. On the conclusion of the 24th, had you completed

1 the inspection?

2 A. No.

3 Q. Okay. By the end of the day on the -- when you left on
4 the 25th, had you completed the inspection then?

5 A. No.

6 Q. Okay. And then why is it that -- that this one took
7 longer than you anticipated?

8 A. The nature of the discrepancies that we found were so, I
9 guess, complete and so varied that rather than matching up what
10 we -- you know, what was there versus what the books said, we
11 had to first figure out what is here, because there would be
12 items -- his book would say, "I made the silencer, and the
13 silencer was sold to this person," and then we would look and
14 see that that silencer, number one, had never been made.

15 Just the order in which Mr. Melton was recording things in
16 his books hampered our ability to track things from cradle to
17 grave, you know, from when they were made to when they were
18 sold, and so there were -- as we had explained at the
19 beginning, a Form 2 is when the licensee says I have made
20 this -- these silencers, and so he would have these. ATF says,
21 okay, we're looking for these. And I had asked, "Where are
22 these?"

23 And Mr. Melton would point to, well, I think -- or he
24 would say, well, these -- these cores and that tube are
25 eventually going to be that silencer. And so we had to match

1 up all the serial numbers he said he made versus what
2 actually -- could we actually see? What does he actually have
3 the parts and pieces to make? And some of those that hadn't
4 even been made had already been sold and removed from his
5 registry, and so there was that issue alone.

6 And then we had to confirm that all the manufacturing was
7 being conducted at the licensed premises, which we had
8 information that -- that the cores were being manufactured off
9 site, but Mr. Melton had insisted that he was making the
10 internal baffles on site by hand; so we had to look at that.

11 And then another factor we had to look at is Mr. Melton
12 was not having customers complete 4473s when they came to pick
13 up their silencer, and so there were, you know, this large
14 number of transactions where background checks should have been
15 done that weren't done or 4473s documenting the transfer should
16 have been done and weren't done.

17 Q. How many instances of the failure to complete the 4473s do
18 you believe you uncovered?

19 A. 200.

20 Q. Okay. And those -- under federal law is a silencer --
21 does a silencer constitute a firearm?

22 A. It does.

23 Q. And so you'd have to complete the 4473 for each of those?

24 A. Correct.

25 Q. Okay. Roughly how many violations did you uncover?

1 A. Can I reference my report?

2 Q. Sure.

3 A. I mean -- 18.

4 Q. Okay. Eighteen total violations?

5 A. Yes, sir.

6 Q. And one of them might be, for example, a failure to do the
7 4473s?

8 A. Correct.

9 Q. So they were -- of those 18 there may be, like, for
10 example, you said 200 instances where that didn't happen?

11 A. Correct.

12 Q. Okay. What was the general nature of the shop? Was it
13 organized?

14 A. Not -- not to the outside eye.

15 Q. Okay. And what was the -- did that hamper your ability to
16 complete an inspection in a timely fashion?

17 A. Yes.

18 Q. Okay. And can you describe for us what the inside of the
19 shop was like?

20 A. Sure. So the -- the storefront area, there were items on
21 shelves and on the floor. There were items around Mr. Melton's
22 desk, and then behind that wall there was a workshop area.
23 There was a lot of tools and silencer parts on a workbench and
24 on another counter. Then in the middle section there was,
25 like, a kitchenette area, and in the oven -- he was using the

1 oven to bake the silencer parts before they were being
2 Cerakoted so that they would be dry as part of his
3 manufacturing process. And then -- and there, you know,
4 were -- were outer tubes of silencers, inner cores of silencers
5 all in that area.

6 And then in the back area where the machinery was, the
7 lathe, drill press, stuff like that, you know, there were once
8 again silencer cores, odds and ends and -- yeah. I mean, there
9 was -- and then, well, in the kitchenette assembly area, there
10 was a stack of Form -- approved Form 2s and Form 4s that
11 Mr. Melton had referred to as his to-do pile, which would be
12 actually assemble and make the silencers that he had already
13 reported as made and sold.

14 Q. Okay. So would the general nature of the -- I guess, for
15 lack of a better word, call it disorganized. Did that hamper
16 your ability to complete the inspection in a timely fashion?

17 A. Yes.

18 Q. And then the condition of the paperwork and the number of
19 violations, did that also hamper your ability to complete it in
20 a timely fashion?

21 A. Yes.

22 Q. Okay. When you conduct inspections, is it common or
23 uncommon for an inspection to span more than one day?

24 A. It's -- it's common for more than one day. Generally,
25 yeah, we would have that as generally a factor on the level of

1 activity, the size of the inventory, and the amount of
2 discrepancies we -- we uncover.

3 Q. And you mentioned that you thought this might take a day
4 and a half?

5 A. Yes, sir.

6 Q. And that you had secured a hotel nearby?

7 A. Correct.

8 Q. Okay. Did you have a hotel through the weekend until
9 Monday?

10 A. No.

11 Q. And do you have to -- when you get a hotel, do you have --
12 is there a process you have to go through to get approval and
13 book the hotel, essentially?

14 A. Yeah, yeah. The Department of Justice has us go through a
15 whole system where it's done their way, and so anytime that
16 there's overnight travel on the regulatory side, we need to get
17 that kind of lined up and hotels booked and everything at least
18 a few days in advance.

19 Q. At the end of the day on the 25th, when you leave, how
20 close were you to completing the inspection at that point, do
21 you believe?

22 A. Nowhere near half. Maybe a third.

23 Q. And then so did you have to schedule a time when you would
24 come back to complete that inspection?

25 A. Yeah. On the 25th, I had told Mr. Melton that, you know,

1 we were going to have to come back and kind of figure out where
2 things are, and I had given him some instructions as to
3 organizing. Have an idea as to, okay, you know, these -- these
4 tubes and these cores, which serial -- or, you know, match them
5 up with your to-do list so that we know what's what. And then
6 during that time I had prepared a spreadsheet letting him know,
7 okay, here's what ATF says you have. Here's this. Match it up
8 with what you've actually got, and let's figure out kind of
9 where we're at.

10 Q. Okay. And what's the mind-set here, like, when you're
11 doing this? Like, what's the goal at that point when you're
12 giving him instructions like, hey, let's do this?

13 A. Getting him towards compliance.

14 Q. Okay.

15 A. Yeah. You know, we go out and find the problems and try
16 to get them fixed.

17 Q. Okay. So at the end of the day on the 25th, had you --
18 you -- had you had a chance to match up all the inventory to
19 the forms, for example?

20 A. No.

21 Q. Okay. So I'm sure you had other tasks to do, but you're
22 still conducting the same inspection?

23 A. Correct.

24 Q. Okay. Once -- see. During -- let's go back and talk
25 about the first day, on August 24th. Mr. Melton, where was --

1 was he there the entire time?

2 A. Yes.

3 Q. Okay. Well, at least once you're inside the store?

4 A. Yeah. Once he arrived to the shop --

5 Q. Yeah.

6 A. -- he stayed the whole time.

7 Q. Was he required to stay?

8 A. No.

9 Q. Okay. On the 25th, was he there throughout the entire
10 time that you were there?

11 A. Yes.

12 Q. Was he required to stay there?

13 A. No.

14 Q. Okay. Did you tell him or give him an idea of when you
15 may be back? Was he finished on the 25th?

16 A. Yeah. I told him that, you know, we'd be back the
17 following week, and I don't recall if we had set a date before
18 I left on Friday or if I had touched base with him on, you
19 know, Monday the following week to let him know when we'd be
20 back out.

21 Q. Okay. Once -- once an inspection is complete, what --
22 what do you have to do at that point once you conclude an
23 inspection?

24 A. Yeah. When an inspection is complete, we hold a closing
25 conference with the licensee where we present them with the

1 Report of Violations, which is how on the regulatory side I
2 just document here's what the law -- or here's what the
3 regulations say you're supposed to do. Here's what I found.
4 Here's what you need to do to get back into compliance.

5 Q. Do you generate a report of your kind of findings and
6 recommendations?

7 A. Yes.

8 Q. Okay. And then do you -- in that report do you document
9 violations?

10 A. Yes.

11 Q. Based on what you knew at the end of the 25th, were you in
12 a position where you could hold that closing conference, advise
13 Mr. Melton of what he was doing or what he could do to make the
14 situation better or complete your report?

15 A. No.

16 Q. Okay. So when you returned back on the 1st, is that a
17 continuation of the same inspection that began on the 24th?

18 A. Yes.

19 Q. At any time was Mr. Melton threatened with arrest?

20 A. No.

21 Q. Okay. When you were there conducting the inspection, were
22 there some silencers that caused you specific concern?

23 A. Yes.

24 Q. And what types of silencers were those?

25 A. There were some complete silencers that were unmarked,

1 unregistered in his R & D area, and then there was another
2 silencer, a complete silencer, that was not registered to him
3 but registered to a different individual.

4 Q. Okay. You mentioned the ones without the serial numbers.
5 Once a silencer is manufactured to completion, is it required
6 to have a serial number at that point?

7 A. Yes.

8 Q. And is that for the purpose of tracking it through the
9 paperwork?

10 A. Correct.

11 Q. Okay. Is it a violation to have a silencer without a
12 serial number?

13 A. Yes.

14 Q. And did you bring that to Mr. Melton's attention during
15 the inspection?

16 A. I believe on the -- by the 25th, I had gotten the
17 explanation for what this box was and then I --

18 Q. You mentioned an R & D. What's that?

19 A. Research and design.

20 Q. Okay. And how -- what do you -- how did you know it was
21 an R & D box or an R and design?

22 A. Well, that's how Mr. Melton had described it, that these
23 are designs that he had tried out, designs that maybe part of
24 it didn't work but he kept or -- and he put together parts from
25 other ones that did work, but they were -- you know, to my eye

1 they were complete silencers.

2 THE COURT: They were or were not complete?

3 THE WITNESS: They were.

4 THE COURT: Okay.

5 BY MR. MOLSEN:

6 Q. Okay. And you mentioned you had -- there was another
7 silencer that wasn't registered to him?

8 A. Correct.

9 Q. Do you recall the manufacturer of that silencer?

10 A. It was a Yankee Hill Machine silencer.

11 Q. Okay. So that's a separate manufacturing company?

12 A. Correct.

13 Q. Okay. And then so for the Yankee Hill silencer to end up
14 in Mr. Melton's possession, would there had to have been, let's
15 say, an ATF Form 3 completed?

16 A. Correct, yeah. For it to legally be there, it would
17 either have had to have been Form 3'd to him if it was from
18 another company, or if it was from a private owner, they could
19 have Form 4'd it to Mr. Melton.

20 Q. Okay. Were you able to find either one of those forms to
21 match up with that silencer?

22 A. No.

23 Q. Okay. Did you ask him for an explanation of how that
24 silencer ended up in his possession?

25 A. I did.

1 Q. And what did he say?

2 A. Mr. Melton reported that the owner of that silencer had
3 given it to him as a down payment for a silencer he was having
4 Leadfoot manufacture.

5 Q. Okay. But no form -- no required Form 4?

6 A. Yeah. I mean, it -- anytime you're transferring stuff
7 like that, it requires one of the NFA forms, and that was not
8 completed.

9 Q. Okay. I think we touched on this before, but was there --
10 are baffles part of the internal components of some silencers?

11 A. Yes.

12 Q. And is it the baffle that kind of help -- or assists in
13 the noise reduction?

14 A. Correct.

15 Q. Okay. Were some of Mr. Melton's silencers made with
16 baffles?

17 A. Yes.

18 Q. And you indicated that there -- that he said that they
19 were handmade; is that correct?

20 A. Correct.

21 Q. Did you have the occasion when you were on site to see the
22 baffles?

23 A. Yeah. The -- the silencer cores, yeah, were -- I mean,
24 they were prevalent all around the premises, yeah.

25 Q. And did you -- did you -- did he say that they were

1 handmade on site there?

2 A. He did.

3 Q. Okay. And when you inspected them, did you have reason to
4 be suspicious of that?

5 A. I did.

6 Q. And why is that?

7 A. I mean, they were -- from a layman's perspective, I mean,
8 they were a precision -- precision-made item, and looking at
9 the machinery that Mr. Melton had at the licensed premises, he
10 had a lathe, but, you know, something of the nature of what I
11 was looking at with those monolithic baffle cores, you would
12 expect to see a CNC machine, something like that, to
13 manufacture that many with that level of precision.

14 THE COURT: Did you say "CNC"?

15 THE WITNESS: Yeah, CNC, Charlie, Nancy, Charlie.

16 THE COURT: Thank you.

17 BY MR. MOLSEN:

18 Q. And a CNC machine, is that a machine that's designed to
19 carve out metal?

20 A. Correct.

21 Q. Okay. No such machinery on site?

22 A. Correct.

23 Q. Did you at some point confront Mr. Melton with what you
24 were observing versus what you suspected happened?

25 A. Yes, yeah. On the 24th and the 25th, I was asking where

1 the -- how the cores were made, and he had explained that he
2 gets bar stock from his supplier, and, you know, he explained
3 the process of how he would use the lathe and the drill press
4 to manufacture each of these.

5 And, you know, I just kept asking about it and, you know,
6 asked, you know, if -- you know, where -- if he had any samples
7 of the bar stock, and I think he presented like a 2- or 3-inch
8 segment that he found on -- nearby on the floor, and then I
9 kept asking about it and asked if, you know, he had -- how he
10 was able to make them identical, asked him if he used any type
11 of jig or -- or support like that, and he said no, he did them
12 all by hand. And then eventually on the 1st, when I was there
13 on the 1st, Mr. Melton did acknowledge that he did have those
14 manufactured by another company.

15 Q. And is that itself a violation?

16 A. Yeah. That's -- all of the manufacturing needs to be
17 conducted at the licensed premises --

18 Q. Okay.

19 A. -- and --

20 Q. Could he get approval to do it elsewhere?

21 A. Yes.

22 Q. Okay. Is that called a variance?

23 A. Yeah. So, I mean, he could have a marking variance, I
24 mean, and he could -- other FFLs could be part of the
25 manufacturing chain.

1 Q. And if that was done would he get permission through ATF,
2 would that be documented --

3 A. Yeah, yeah.

4 Q. And was there an indication that he had received approval
5 to manufacture parts out, like, off site?

6 A. No.

7 Q. Okay. Did Mr. Melton help you in identifying documents
8 with specific items?

9 A. Yes.

10 Q. Okay. And was that help- -- helpful to you in -- as far
11 as figuring out what goes with what?

12 A. Yeah, yeah. In his desk he had, you know, his, like,
13 Form -- he had, you know, files for his Form -- historical Form
14 2s and Form 4s for items that he had made and already sold. He
15 had all those on file and was able to produce those and help us
16 understand how he had them organized.

17 Q. Okay. When the inspection is done, is there anything that
18 Mr. Melton has to sign?

19 A. At the closing conference he signs acknowledging that he
20 received a copy of the Report of Violations. The signature --
21 the line is, you know, I certify that I've received this, you
22 know. That's the gist of it.

23 Q. Are you able to do that on the 1st?

24 A. No.

25 Q. Okay. So you have to do your report, make your findings,

1 your recommendations, and then return?

2 A. Correct.

3 Q. Okay. So when you return, that's not an inspection.
4 You're just kind of meeting with him. It's, like, hey, here's
5 the final paperwork?

6 A. Correct.

7 Q. Okay.

8 A. Yeah. I mean, yeah. It's the bookend.

9 Q. Okay. When -- when you leave on the 1st, do you give him
10 an indication of how things stand or how things are looking?

11 A. Yeah.

12 Q. And did you -- what did you advise Mr. Melton in this
13 case?

14 A. I had advised him that if he was wanting to maintain his
15 FFL, he is going to have a lot of work ahead of him, and I
16 explained, you know, some of the thing -- the concerns or the
17 discrepancies that we found. And I let him know that I would
18 be putting together, you know, the Report of Violations which
19 would document what needs to be done to get these fixed.

20 And I told him, okay, here's things that you can be
21 working on now prior to the closing conference so that, you
22 know, if you're serious about doing the work necessary to
23 correct these violations, here's what you need to be doing.
24 But I did let him know that if the -- if it was just too much
25 and he wanted to wash his hands and walk away, you know, he did

1 have the option of surrendering his license.

2 Q. Okay. And that's had at the 1st, when you're done with
3 the inspection?

4 A. Yeah. I know we talked about that on the 1st, yeah.

5 Q. Okay. At this point, once the inspection is finally done
6 and completed and you have that conversation, what do you do at
7 that point?

8 A. On the 1st?

9 Q. Uh-huh.

10 A. I returned back to Omaha and then spend the next few weeks
11 just compiling everything because, you know, it wasn't just
12 that I had to figure out that he wasn't doing 4473s. How many?
13 And go through all the -- everything and match it up.

14 Q. So did basically you just leave at that point?

15 A. Yes.

16 Q. Is Mr. Melton arrested or anything at that time?

17 A. No.

18 Q. Okay. Ever told he was going to be arrested?

19 A. No.

20 Q. And I think we mentioned Special Agent Shelton and
21 Sorenson leave after a couple hours on the 24th. Did they come
22 back on the 25th?

23 A. No.

24 Q. Did they come back on the 1st?

25 A. No.

1 Q. Who was with you on the 25th?

2 A. IOI Vickers.

3 Q. Okay. The other inspection officer?

4 A. Correct.

5 Q. Okay. And then was anybody with you on the 1st?

6 A. IOI Vickers was with me once again.

7 Q. And he has the same role that you -- or he's in a trainee
8 status but essentially the same job?

9 A. Yeah, yeah.

10 Q. Yeah. So you -- basically, when you leave, you're telling
11 him, "You can either work towards coming into compliance or
12 just surrender your license"?

13 A. Correct.

14 Q. Okay. Over the months that follow, did you continue to
15 have communications with Mr. Melton?

16 A. I did.

17 Q. Did you do so over the phone?

18 A. Over the phone and email and text.

19 Q. Okay. Did you give him a deadline, basically a deadline
20 in which to come into compliance?

21 A. As of the 1st, I had not yet. The deadlines weren't put
22 in place until after the closing conference, which in the
23 Report of Violation there are suspense dates where, okay, I
24 need you to have it done by such-and-such date.

25 Q. On -- when did -- the closing conference, when did that

1 take place?

2 A. November 7th.

3 Q. And where did that take place at?

4 A. At Mr. Melton's shop, at Leadfoot.

5 Q. So you went back out to Holdrege?

6 A. Yes.

7 Q. And did anybody go with you on that day?

8 A. That one I was on my own.

9 Q. Okay. So you head back out to Holdrege. Did you meet
10 with Mr. Melton at his shop?

11 A. Yes.

12 Q. And what happens during that closing conference?

13 A. During the conference Mr. Melton had shown me steps that
14 he had taken to get his manufacturing process organized, and
15 then we sat down, and we went through the violations discovered
16 during the inspection. And during this time, you know, I give
17 him the opportunity to ask any questions to make sure he
18 understands what there was.

19 And I think there's even one thing that we corrected that
20 I had on the RO- -- on the Report of Violations that he had
21 reminded me that we had addressed, and so I had struck that
22 from the Report of Violations. And then, yeah, we -- you know,
23 from there we talked a bit about Husker football, and just, you
24 know, I implored him that, you know, if he was serious about
25 keeping his license to get these corrective actions completed.

1 Q. And so you were giving him the option then of trying to
2 come in compliance, then, still?

3 A. Correct.

4 Q. Okay. And so on the 7th, are you doing any more
5 inspection, or is it just primarily conversation and answering
6 questions?

7 A. Primarily conversation, answering questions. There was
8 some confirmation of stuff that he -- that Mr. Melton said that
9 he had completed that, you know, we just verified or
10 double-checked, but the -- the gist of it was just reviewing
11 the Report of Violations and the corrective actions so that he
12 understood what he needed to do.

13 Q. Did you identify for him or give him a deadline in which
14 to complete his work to come into compliance?

15 A. Yes.

16 Q. And what was that deadline?

17 A. Just making sure that it's consistent. For the -- for the
18 ones where he -- he did need to take action, I had given him a
19 deadline of December 8th.

20 Q. Okay. And did he come into compliance by that date?

21 A. No.

22 Q. Did you ever -- did you receive more communication from
23 him after December 8th?

24 A. Yes.

25 Q. And what was the nature of that communication?

1 A. I'm trying to -- so I would check on -- I had -- in part
2 of the corrective actions, he was to go through and identify of
3 all of the silencers that he reported as manufactured to ATF,
4 confirm which ones were actually manufactured and which ones
5 were never made so that we could start the process of having
6 those removed from the record or I mean -- what else did I have
7 him do? Get his actual manufacturer's record into compliance.

8 The manner in which he was maintaining his manufacturer's
9 record, which he's required to keep, didn't meet the
10 requirements, and so I was telling him, okay, you need to make
11 sure these are all lined up.

12 Q. Okay. Does -- at some point does he ask for more time?

13 A. No.

14 Q. Okay. And is this -- those communications, are those by
15 email or over the phone, or how are those being done?

16 A. Primarily phone and email.

17 Q. Okay. Any text messages back and forth?

18 A. Yeah.

19 Q. Okay. When you meet with him on the 7th for that closing
20 conference, who chose the time and place?

21 A. I did just to make -- but -- you know, to make sure that
22 it would work for -- for him.

23 Q. Okay. And then -- okay. And the silencers that were in
24 question, like primarily the ones without the serial numbers
25 and then the Yankee Hill silencer that wasn't registered --

1 A. Uh-huh.

2 Q. -- where were those on the 7th when you met with him?

3 A. On the 7th, they were back in his workshop area.

4 Q. Okay. Still in his custody?

5 A. Yes.

6 Q. Okay. And then after you had that closing conference,
7 basically I take it you go home and you're done or go back to
8 Omaha, at least, or --

9 A. That day, yeah, yeah.

10 MR. MOLSEN: Okay. Okay. I have no further
11 questions at this time.

12 THE COURT: Cross-examination.

13 MR. FERDICO: Thank you.

14 CROSS-EXAMINATION

15 BY MR. FERDICO:

16 Q. IOI Kubert, just to make sure -- and is it Kubert or
17 Kubert? I'm sorry.

18 A. The former, Kubert.

19 Q. Okay. Thank you.

20 A. Yeah.

21 Q. With a name like Ferdico, I can be sensitive to that; so I
22 apologize.

23 A. Appreciate it.

24 Q. So you talked a little bit about the differences between
25 industry operations inspection -- inspectors like yourself and

1 a special agent.

2 A. Uh-huh.

3 Q. And a special agent is a certified law enforcement
4 official and undercover law; correct?

5 A. Correct.

6 Q. Okay. They have the power to arrest. They are the ones
7 that carry the guns. They kick in the doors and do all that
8 stuff. Is that fair?

9 A. Correct.

10 Q. Okay. Not your role?

11 A. Correct.

12 Q. Okay. Oftentimes in the field when you do these
13 inspections, you're by yourself because the concept of a
14 compliance inspection is you're just going to verify that books
15 are in order, that firearms are accounted for, and make sure
16 that there's nothing horribly amiss. Is that fair?

17 A. Correct.

18 Q. Okay. Now, you mentioned that you brought two special
19 agents along with you because of concerns about his arrest
20 record. Now, I want to clarify that, because in order to have
21 an FFL, you have to be -- you can't be a prohibited person; is
22 that correct?

23 A. That's correct.

24 Q. And what I mean by that, just to make the record clear, is
25 we're -- and to make sure that we're speaking the same

1 language -- I'm confident we are -- but to make sure we're
2 speaking the same language, a prohibited person, when I use
3 that term, is kind of an industry term that refers to people
4 who are not allowed to own, possess or transfer items under the
5 Gun Control Act?

6 A. Correct.

7 Q. Okay. So generally speaking, if you can buy a firearm,
8 technically you are -- technically you can become an FFL. I
9 understand there are -- there are some business licensure
10 requirements, and there may be some local -- what's the term --
11 zoning requirement issues, but for the most part, if you can
12 own a firearm, you can be an FFL?

13 A. Correct.

14 Q. Okay. And so there are people who can have arrests and
15 tickets but still -- in their background, but that wouldn't
16 necessarily prohibit them from owning a firearm or being an
17 FFL?

18 A. Correct.

19 Q. Okay. And generally speaking, people who are prohibited
20 persons include felons; is that correct?

21 A. Correct.

22 Q. Okay. It would include misdemeanor people --
23 misdemeanants who have been convicted of a crime of domestic
24 violence?

25 A. Correct.

1 Q. Okay. They would include abusers or persons addicted to
2 prescription or nonprescription medication?

3 A. Correct.

4 Q. Okay. In other words, they're a class of people that
5 could be considered to be dangerous?

6 A. Correct.

7 Q. Okay. But there are also many violations that people can
8 have that don't necessarily make them dangerous or make them
9 prohibitive of owning a firearm; is that fair?

10 A. Yes, sir.

11 Q. Okay. And Mr. Melton at the time was a licensed -- a duly
12 licensed FFL holder?

13 A. Yes, sir.

14 Q. Okay. Now, you had mentioned that, generally speaking,
15 because of the -- it's not a secret in the industry that there
16 are not enough IOIs to conduct yearly regulatory inspections on
17 every FFL holder in the United States. That's not a problem
18 unique to Nebraska?

19 A. Correct.

20 Q. Okay. And so generally what happens is people -- if I
21 understood your testimony correctly, people at kind of a higher
22 pay grade than yours -- and no disrespect -- kind of prioritize
23 who you're going to go touch based on their agendas; is that
24 fair?

25 A. Yes, sir.

1 Q. Okay. And your job isn't to go in and shut FFL holders
2 down. Is that fair?

3 A. Correct.

4 Q. Okay. Your job is to -- in some ways you're a resource to
5 FFL holders who may be making technical errors that you can
6 help them get better at doing what they're doing so that the
7 ATF can do its job. Is that fair?

8 A. Yes, sir.

9 Q. And the regulation -- we'll get into some of the
10 regulation soup that is the Gun Control Act and the CFRs
11 related to it, but there are a lot of them. Is that fair?

12 A. Yes, sir.

13 Q. And a highly regulated industry, firearms?

14 A. There are regulations for the firearms industry.

15 Q. Would you consider it a highly regulated industry?

16 A. And I'm not trying to be difficult, but it is the only
17 industry that I've ever regulated --

18 Q. Sure.

19 A. -- so -- but yeah.

20 Q. That's fair. The -- with regard to your inspections, it
21 would be fair to say that it would be rare that you would walk
22 in to an FFL holder and not find some sort of violation?

23 A. Correct.

24 Q. Okay. It's kind of like the tax code that it can be so
25 complicated that even the best intentioned people are going to

1 make mistakes?

2 A. Yeah. FFLs make mistakes, yeah.

3 Q. Okay. Yeah. And you help them through that process, and
4 oftentimes they get better and move on?

5 A. Yes, sir.

6 Q. Okay. To clarify some of the conversations that we've
7 had -- I'm sorry, some of the conversations that have been had,
8 I'm going to use three terms, two of them interchangeably, and
9 I kind of want to help define those for the record. We've
10 talked about -- I'm going to use the terms Title 1 firearms,
11 Title 2 firearms, and NFA firearms. Are you familiar with
12 those terms?

13 A. Yes.

14 Q. Okay. A Title 1 firearm is essentially any firearm that I
15 can go into Scheel's and purchase using a 4473. Is that fair?

16 A. Yes, sir.

17 Q. Okay. And a Title 2 firearm are the specialized firearms
18 that are controlled by the NFA. Is that accurate?

19 A. Yes, sir.

20 Q. Okay. And we also refer to those as Class III firearms?

21 A. Right.

22 Q. Is that -- so a Class III and Title 2 firearms are
23 interchangeable terms?

24 A. Yeah. I mean, in terms of the industry, yes. Class III,
25 to get into the weeds a little bit, specifically refers to

1 dealers. Class II would be a manufacturer of NFA --

2 Q. Yeah.

3 A. -- but among the industry and enthusiasts, Class III is
4 kind of also used as an interchangeable term.

5 Q. Okay. But we're talking about -- essentially, from the
6 buyer perspective, it's really a Title 1 firearm or a Title 2
7 firearm, but I still call it a Class III, because that's what
8 everybody calls it.

9 A. Correct.

10 Q. Okay. So now Title 2 is interesting, and what I'm
11 referring to -- and correct me if I'm wrong -- is Title 1 of
12 the Gun Control Act and Title 2 of the Gun Control Act. Is
13 that accurate?

14 A. Yeah. In my active vocabulary I think of things at 478
15 and 479 --

16 Q. Okay.

17 A. -- from the CFR --

18 Q. Okay.

19 A. -- and so I don't want -- I just --

20 Q. Okay.

21 A. Yeah. 478 and 479.

22 Q. Okay. And 478 refers to the --

23 A. The Gun Control Act.

24 Q. -- regulations --

25 A. Yeah.

1 Q. -- with regard to the --

2 A. Gun Control Act.

3 Q. -- Gun Control Act, and 479 refers to the NFA?

4 A. Correct.

5 Q. Now, the NFA is, interestingly enough, in the IRS Code,
6 isn't it?

7 A. Correct.

8 Q. Okay. Because it's a taxing scheme?

9 A. Yes, sir.

10 Q. Okay. It's -- now, of course, there are regulations with
11 regard to taxing, and it's part of that, so that's what you do.
12 But Form 4 is actually a tax return, isn't it?

13 A. That's correct.

14 Q. Okay. And the stamp you talk about is a tax paid stamp.
15 In other words, when the ATF receives it, has verified that the
16 tax return is filled out correctly, has verified that the
17 person that is being the -- the item who is -- the person who
18 is requesting to take possession of this item is not a
19 prohibited person and that they've received their tax, they
20 mark it as tax paid, and that return then goes to the
21 individual consumer as his record that they have completed the
22 appropriate process?

23 A. Correct.

24 Q. Okay. So there's really no distinction -- ignoring state
25 laws, there's no distinction under federal law as to somebody

1 who can own a Title 1 firearm versus a Title 2 firearm. The
2 only issue is whether you pay a particular tax or not and
3 follow the procedures in paying that tax; is that fair?

4 A. Correct, outside of state considerations.

5 Q. Right. Outside of state rules?

6 A. Yes, sir.

7 Q. Some states don't allow NFA items?

8 A. Correct.

9 Q. So in other words, as a practical matter for the consumer,
10 if I can buy a gun in Scheel's, I can buy a Title 2 firearm or
11 a Class III firearm as long as I pay my tax and have the
12 appropriate paperwork filed in advance of me taking possession
13 of it?

14 A. Correct.

15 Q. Okay. So it's complicated, but it's not really as
16 complicated as it seems?

17 A. There's a learning curve but, yeah, it's masterable.

18 Q. Okay. Now, in this particular case Leadfoot wasn't on --
19 Leadfoot was brought to your attention, and you were asked to
20 conduct a compliance inspection of them because they had
21 received a report from a known individual that Leadfoot was
22 engaged in violations of the Gun Control Act or the NFA?

23 A. Correct.

24 Q. Okay. And that report you listed, if I'm accurate, you
25 were -- the report that you were referring to, to help with

1 your testimony here, was that your Firearms Inspection Report,
2 revised, of July 1st, 2015?

3 A. Okay. I want to make sure that we're -- the information
4 that ATF received that prompted a compliance inspection?

5 Q. No. Thank you.

6 A. Okay.

7 Q. You had referred to a report during your testimony today
8 to refresh your recollection.

9 A. Correct.

10 Q. Is that correct?

11 A. Yes, sir.

12 Q. And was -- the report you were referring to, was that your
13 Firearms --

14 A. Yes, sir.

15 Q. -- Inspection Report?

16 A. Yes, sir.

17 Q. Revised July 1st, 2015?

18 A. Yeah. And for your information that revised date was when
19 the template was revised by our operations folks --

20 Q. Okay.

21 A. -- and nothing pertaining to this inspection.

22 Q. Okay. The date on the inspection is actually -- or the --
23 what -- where do I find in this the date of the report?

24 A. So on the -- the report I have a digital signature on page
25 21 --

1 Q. Okay.

2 A. -- of February 9th.

3 Q. Okay. So this report would have been finalized by you on
4 February 9th --

5 A. Yes, sir.

6 Q. -- of 2000 -- what date? I'm sorry.

7 A. 2018.

8 Q. '18? Okay.

9 MR. FERDICO: Can I approach?

10 THE COURT: Yes.

11 MR. FERDICO: I'd like to mark this as Exhibit 1.

12 COURTROOM DEPUTY: I'll make it 101 for you.

13 MR. FERDICO: Okay. Thank you.

14 THE COURT: Is it going to be 101?

15 MR. FERDICO: 101, Your Honor. Thank you.

16 THE COURT: All right.

17 BY MR. FERDICO:

18 Q. And I'm going to -- probably smudge the ink -- hand you a
19 copy of Exhibit 101 and see if that's a true and accurate --

20 A. Okay.

21 Q. -- copy of the report you've been talking about.

22 THE COURT: Mr. Molsen, are you going to have any
23 objection to this report being received?

24 MR. MOLSEN: No, Your Honor.

25 THE COURT: Would you like me to just receive 101 at

1 this time?

2 MR. FERDICO: Yes, Your Honor.

3 THE COURT: Exhibit 101 is received.

4 MR. FERDICO: And then I'd like to mark 102, which is
5 a copy of Exhibit 1 to 101.

6 THE COURT: Well, that's fun. Okay. 102, which is
7 Exhibit 1 to 101. Is that what you said?

8 MR. FERDICO: Yes, yes. That's the police report. I
9 had that printed out, and I apparently left it on my desk, but
10 it was attached to my brief.

11 THE COURT: All right. Why don't -- let me -- let me
12 look in the brief, and then I'll ask the government if I can
13 take judicial notice of it. So just a moment.

14 MR. FERDICO: Thank you.

15 THE COURT: Or I can print it.

16 MR. KALEMKIARIAN: Judge, we have a copy of our
17 brief.

18 MR. FERDICO: I'm sorry. I've got --

19 THE COURT: Do you have one?

20 MR. FERDICO: Yeah.

21 MR. KALEMKIARIAN: Yes.

22 THE COURT: Okay. Let's do it that way.

23 MR. FERDICO: Yeah. My apologies.

24 MR. MOLSEN: I have no objection, Your Honor.

25 THE COURT: All right. 102, which is Exhibit 1 of

1 101, is received.

2 MR. FERDICO: Okay.

3 THE COURT: Assuming that somebody knows what it is
4 here in just a moment.

5 MR. FERDICO: Yes.

6 BY MR. FERDICO:

7 Q. I'm handing you Exhibit 102. Is this the document that's
8 referenced on 101 as Exhibit No. 1?

9 A. Yes, sir.

10 Q. Okay. And is that a true and accurate copy?

11 A. Yes, sir.

12 MR. FERDICO: Okay. Thank you. With that I'd
13 confirm that they've been offered and received, Your Honor?

14 THE COURT: They have been offered and received.

15 MR. FERDICO: Thank you.

16 MR. MOLSEN: And Your Honor?

17 THE COURT: Yeah.

18 MR. MOLSEN: These do entail tax records; so we'd ask
19 that they just be restricted to the parties, if we can.

20 THE COURT: Sure.

21 MR. MOLSEN: Okay.

22 THE COURT: They'll be -- how do we do that, Jeri,
23 when they're -- okay. She's nodding yes; so she knows how to
24 do it. So we're good.

25 MR. MOLSEN: All right. Thank you.

1 MR. FERDICO: And for clarification, just for the
2 record, these are offered for the -- for purposes of the
3 suppression hearing only.

4 THE COURT: All right.

5 MR. FERDICO: Thank you.

6 BY MR. FERDICO:

7 Q. Those reports accurately reflect the nature of the
8 conversations that you had with Mr. Melton?

9 A. Yes, sir.

10 Q. Okay. And those reports accurately reflect the time line
11 of events?

12 A. Yeah. The inspection report.

13 Q. Yes.

14 A. Not Exhibit 1 to --

15 Q. Correct. Thank you. Exhibit 101. So if there were
16 slight variations, would it be fair -- in your testimony versus
17 the report, would it be fair to defer to the report as being
18 more accurate?

19 A. I would think so.

20 Q. Okay. Now, you talked about compliance inspections are
21 typically done during business hours by regulation.

22 A. Yes, sir.

23 Q. Okay. And you don't need a warrant for what is defined as
24 a compliance inspection either under federal law or under the
25 Code of Federal Regulations?

1 A. Correct.

2 Q. Okay. Are you familiar with the two types of warrants the
3 ATF can obtain?

4 A. Yeah. You know, we have the -- like, I guess, a regular
5 search warrant and then an administrative warrant.

6 Q. Inspection warrant?

7 A. Inspection warrant, yeah.

8 Q. Okay. So there are two types of warrants that the ATF is
9 required to obtain under certain -- if certain conditions are
10 met. Is that fair?

11 A. Yeah.

12 Q. And I'm being extremely general.

13 A. Yeah.

14 Q. Just -- you're familiar with what an inspection warrant
15 is?

16 A. Correct.

17 Q. Okay. And you're familiar that upon probable cause you
18 can just get a general probable cause warrant?

19 A. Yeah, I'm aware of --

20 Q. Okay. As an IOI, even though you're not the person who
21 has the authority to arrest, if you walk into a place and it is
22 clearly a danger to the public, you can -- you've got resources
23 you can call and shut that place down immediately?

24 A. I've got resources that I can call, and they would make
25 the decision then.

1 Q. Okay. And you talked about the timing of the -- how much
2 time you allot versus how much time it actually takes to
3 conduct these inspections, and the reality is, is when you're
4 allotting -- especially for an FFL who either it's been a
5 number of years since you've been there or it's a first
6 inspection, it's kind of a guess, because you really don't know
7 what you're walking into at that point?

8 A. Correct.

9 Q. Okay. So it's not unusual for you to have to call back to
10 the office and say I need more time because there are -- either
11 is more firearms in inventory or there are more Form 5s than I
12 was expecting or this, that, or the other thing. Is that fair?

13 A. Sure.

14 Q. Okay. So that, unfortunately, is just an inherent danger
15 of the profession?

16 A. Correct.

17 Q. Okay. And the compliance inspections, being done during
18 business hours, even though you don't require business owners
19 to be there, generally speaking, business owners are there?

20 A. Correct.

21 Q. Okay. That's because it's business hours, and they're
22 running a business?

23 A. Right.

24 Q. Okay. So nothing you're doing requires the business owner
25 to shut down operations in order for you to do your job?

1 A. Correct.

2 Q. Okay. In fact, it's kind of designed that, you know, to
3 the extent possible, you try not to be in the way so that they
4 can continue to engage in their occupation. Is that fair?

5 A. My -- my approach is to try to conduct the inspection with
6 minimal interruption to the licensee's business.

7 Q. Okay. And that's not uncommon?

8 A. Correct.

9 Q. Okay. Just one more question. Did you -- you indicated
10 that there -- the December 8th deadline to comply. Did you
11 prepare a report indicating that you had verified that there
12 wasn't compliance?

13 A. In my final investigation report, I tracked what happened
14 since the closing conference.

15 Q. Okay.

16 A. Yes, sir.

17 Q. So that would be included in Exhibit 101?

18 A. Yes, sir.

19 MR. FERDICO: Okay. No further questions at this
20 time, Your Honor.

21 THE COURT: Redirect.

22 MR. MOLSEN: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. MOLSEN:

25 Q. There was some discussion of the -- what's been referred

1 to as the NFA items, the Class II items or the -- I'm sorry,
2 the Title 2 or the Class III items, and those encompass things
3 such as silencers, short barreled rifles, fully auto weapons;
4 is that correct?

5 A. Correct.

6 Q. Okay. Are there additional more stringent regulations in
7 place for those types of items?

8 A. Yes.

9 Q. And -- and one of those is the -- we've talked about
10 completing the Form 3s and the Form 4s, for example; is that
11 correct?

12 A. Correct.

13 Q. And the -- the goal of those forms, is that to have each
14 individual serialized item registered with the government to a
15 specific person?

16 A. Yes.

17 Q. Okay. And so is it important, then, to complete or be in
18 compliance with completing those forms so that those forms
19 can -- those items can be tracked?

20 A. Yes, sir.

21 Q. Okay. And when items such as silencers that fall under
22 that category are not serialized, does it make -- does it make
23 completing that goal difficult?

24 A. Yeah. I mean, it wouldn't be -- couldn't be registered.

25 Q. And is that why it's required to be serialized?

1 A. Yes.

2 Q. Okay. There was some talk about if you had the
3 resources available to shut down the business right away that
4 you could make a phone call, and someone else might make that
5 decision?

6 A. Yeah.

7 Q. Have you ever done that in 14 years?

8 A. No.

9 Q. Okay. And there was some talk about there is always going
10 to be some danger doing an inspection; is that correct?

11 A. Yes.

12 Q. How often do you ask for agents to accompany you?

13 A. A couple times a year.

14 Q. Okay. And what was the reason why you chose to do so in
15 this case?

16 A. The nature -- or the information that was received prior
17 to the inspection indicated that Mr. Melton could be volatile,
18 and just looking at the arrest record that there were assaults
19 earlier on, and just, I mean, in general, people do not like to
20 see me and I just -- those factors made me think I should have
21 someone with me.

22 Q. Okay. But then after a couple hours of conducting
23 inspection, did you determine that it didn't seem it was going
24 to appear to be an issue in this case?

25 A. Correct.

1 Q. And then from that point, once Special Agents Shelton and
2 Sorenson leave, did you ever have the agents with you during
3 this inspection on any of the days after?

4 A. No.

5 MR. MOLSEN: Okay. I have no further questions.

6 THE COURT: You may step down.

7 MR. FERDICO: Your Honor, may I ask a question for
8 clarification?

9 THE COURT: One, uh-huh.

10 MR. FERDICO: Thank you.

11 RE CROSS EXAMINATION

12 BY MR. FERDICO:

13 Q. So you would agree, then, that part of your decision to
14 bring the special agents was the prior report that -- in this
15 case, exhibit -- the information contained in Exhibit 102?

16 A. Yeah. I mean the -- yeah, yeah.

17 MR. FERDICO: Okay. Thank you. No further
18 questions, Your Honor.

19 MR. MOLSEN: And no follow-up, Your Honor.

20 THE COURT: I had heard earlier on that there was
21 something -- let me check in my notes, hang on just a moment --
22 that it was the preinspection and prior arrests. What were the
23 prior arrests that -- what I had heard was that the two special
24 agents, Cory Shelton and Tony Sorenson, were brought along
25 because of what you knew going into this, which included prior

1 arrests. Did I misunderstand what you said?

2 THE WITNESS: No. That's what I said.

3 THE COURT: Okay. What were those prior arrests?

4 THE WITNESS: There were arrests for assault when
5 Mr. Melton, I think, was in his late teens, early twenties.

6 THE COURT: Okay, all right. Any questions on my
7 question?

8 MR. MOLSEN: No, Your Honor.

9 FURTHER RECROSS EXAMINATION

10 BY MR. FERDICO:

11 Q. Nothing in that would have prohibited him from being a FFL
12 holder?

13 A. That's correct.

14 MR. FERDICO: Okay.

15 THE COURT: All right. You may step down.

16 MR. FERDICO: Thank you, Your Honor.

17 THE COURT: Uh-huh.

18 MR. MOLSEN: And, Your Honor, the government would
19 call Special Agent Shelton.

20 THE COURT: All right. Special Agent Shelton. We'll
21 tell the parties that we have a hard stop at 3:30 for a Quiche
22 interpreter --

23 MR. MOLSEN: Okay.

24 THE COURT: -- on a guilty plea. If we're not done
25 at 3:30, then we will take a break for that plea hearing,

1 because that's -- it's hard for us to arrange those, and we'll
2 get that accomplished and then finish up.

3 MR. MOLSEN: Okay.

4 THE COURT: Okay?

5 MR. FERDICO: Thank you.

6 COURTROOM DEPUTY: Please state your full name for
7 the record and spell your last name for me.

8 THE WITNESS: It's Cory Shelton, S-h-e-l-t-o-n.

9 THE COURT: Okay. Raise your right hand.

10 CORY SHELTON, PLAINTIFF'S WITNESS, SWORN

11 THE COURT: You may proceed.

12 MR. MOLSEN: All right. Thank you.

13 DIRECT EXAMINATION

14 BY MR. MOLSEN:

15 Q. Special Agent Shelton, how are you currently employed?

16 A. I'm currently employed as a special agent with the Bureau
17 of Alcohol, Tobacco, Firearms, & Explosives.

18 Q. And what are your general duties in that role?

19 A. Conduct violent crime investigations and general firearms
20 and explosives violations under federal law.

21 Q. How long have you worked in that capacity?

22 A. A little over four and a half years.

23 Q. On -- in August of 2017, did you have the occasion to
24 accompany Industry Operations Inspector Kubert on the
25 inspection of -- on the inspection of Leadfoot, LLC?

1 A. Yes, I did.

2 Q. And why was it that you went along on this one?

3 A. It was requested. There was a request made through --
4 from -- my boss had assigned it and stated -- I don't remember
5 if it -- what the reason was that I ended up with it, but it
6 was assigned to me that said that they needed at least one or
7 two agents to go with on the inspection.

8 Q. And then when you went with -- once the inspection was
9 underway, what did you do at that time?

10 A. Myself, I was with Greg Kubert, IOI Kubert, and there were
11 two agents, there were two investigators. We decided to split
12 and have one agent per investigator.

13 Q. Okay.

14 A. So I was with IOI Kubert.

15 Q. Were you assisting Kubert in what he was doing?

16 A. Somewhat, but I was more so present.

17 Q. Okay. Did you engage in any questioning of Mr. Melton
18 that you recall?

19 A. I believe I -- I asked some questions. Some of it I think
20 was more so clarification, from what I remember. IOI Kubert
21 would ask a question, and I would add something to it or follow
22 up just -- just more so for clarification.

23 Q. Okay. Was there a point where you determined that -- that
24 it was no longer necessary for you to be there?

25 A. As things were progressing, I don't remember exactly how

1 that transpired, but it got to a point -- I believe it was, you
2 know, an hour and a half, maybe two hours in when IOI Kubert
3 had basically told us that he didn't think he needed us there
4 any longer.

5 Q. Okay. And at that point do you and Special Agent Sorenson
6 leave?

7 A. Yes.

8 Q. Okay. When was the next time that you had the occasion to
9 meet with Mr. Melton?

10 A. I believe it was November 8th.

11 Q. Okay. Were there some silencers that were of concern in
12 this case?

13 A. Yes.

14 Q. And were those silencers that were not identified with a
15 serial number?

16 A. Some of them, yes.

17 Q. And then was there an additional silencer manufactured by
18 another company that had not been registered?

19 A. Yes, and I believe, if I remember correctly, there were
20 one or two that had duplicated serial numbers.

21 Q. What do you mean by "duplicated serial numbers"?

22 A. It was a serial number that was already used and had been
23 transferred or sold. The same item had the same serial number
24 or different -- I'm sorry. Different items had the same serial
25 number.

1 Q. Okay. And does that make it harder to track items?

2 A. Correct.

3 Q. Is that a violation of the regulations, of the laws?

4 A. I believe so.

5 Q. Okay. And you said you had next met with Mr. Melton on
6 November 8th; is that correct?

7 A. Yes.

8 Q. Now, did -- Investigator Kubert, to your knowledge, did he
9 go back to meet with Mr. Melton on November 7th?

10 A. I don't --

11 Q. You weren't -- were you --

12 A. I wasn't present. I don't know. I know I spoke with --
13 with IOI Kubert on November 7th --

14 Q. Uh-huh.

15 A. -- who stated that there were 10 items that were in
16 Mr. Melton's possession that were illegal.

17 Q. On November 8th, did anybody go with you when you met with
18 Mr. Melton?

19 A. It was Special Agent Tony Winkler.

20 Q. Okay. And where did you meet with Mr. Melton at?

21 A. At his shop, at Leadfoot business' storefront.

22 Q. Is your office in Omaha as well?

23 A. Yes.

24 Q. Okay. And what was the purpose of meeting with Mr. Melton
25 on November 8th?

1 A. To pick up the 10 illegal silencers.

2 Q. As a special agent, do you have the authority to seize
3 items that could be evidence in criminal cases?

4 A. Yes.

5 Q. And were you doing that on that occasion?

6 A. Yes.

7 Q. Did you communicate with Mr. Melton at all or advise him
8 of what time you'd be out there?

9 A. I don't remember how that all transpired. I believe I did
10 it through IOI Kubert. I believe IOI Kubert had asked roughly
11 what time we thought we would be out there. I don't recall any
12 phone conversations with Mr. Melton. I believe everything was
13 done through IOI Kubert.

14 Q. Okay. Based on your understanding was it your
15 understanding that Mr. Melton would be expecting you, or was
16 this more of a surprise when you show up?

17 A. No. Mr. Melton was expecting us.

18 Q. Okay. Did he -- did Mr. -- when you arrived, how did you
19 acquire those? Did you -- were you able to acquire those 10
20 silencers?

21 A. Yes.

22 Q. And how was it you were able to acquire those?

23 A. When we arrived, I don't remember if Mr. Melton met us out
24 front or if we -- we had knocked on the door. Mr. Melton met
25 us at the business, took us kind of into -- past the -- the

1 initial showroom, if you will, the first half of the business.
2 We went through the door. There was more of a workshop there,
3 and then that's where we -- we found the 10 items that he had
4 set out.

5 Q. And when you enter the store, did you ask to go in, did he
6 let you in, or how did that happen?

7 A. I don't remember if -- if we had that conversation. I
8 remember showing up and saying something along the lines of,
9 you know, we're here for kind of the 10 items that you and IOI
10 Kubert had discussed, and at which point he kind of escorted us
11 back to where the items were.

12 Q. Okay. So --

13 A. There was no confrontation at the door. There was nothing
14 like that.

15 Q. Okay. So the reason why you're -- you went past the usual
16 area that's open to the public; is that correct?

17 A. Yeah, yes.

18 Q. Okay. And how is it that you ended up past that area?

19 A. We went with Mr. Melton.

20 Q. Okay. Did he escort you back there?

21 A. I don't remember if he led us or if he was behind us, but
22 something along the lines of, well, they're back here kind of
23 in the workshop.

24 Q. Okay. Would it be fair to say he invited you back there?

25 A. Yes.

1 Q. Okay. Did he identify for you where those items were?

2 A. Yes.

3 Q. And did you take those items?

4 A. Yes, we did.

5 Q. Did he point them out, or did he hand them to you, or how
6 did that happen?

7 A. I don't recall if he had them in a box or if they were
8 just on a workshop. I had had a description and I believe a
9 picture from IOI Kubert of the items, and at which point we
10 received those 10 items from Mr. Melton.

11 Q. And in the normal course or according to your standard
12 procedure, when you seize evidence like that, do you take an
13 inventory of what it is that you're seizing?

14 A. Yes.

15 Q. And did you do so in this case?

16 A. Yes, we did.

17 Q. Once you completed the inventory, did you have Mr. Melton
18 acknowledge it?

19 A. We did.

20 Q. And how did you -- how did that happen?

21 A. We filled out a receipt for -- I don't remember what
22 the -- the exact title on the form was, but it's a receipt or
23 an inventory where we had actually listed the 10 items with a
24 description. Mr. Melton did not have to sign it, but he signed
25 it and placed -- asked what to do with it. He placed it into

1 his A & D, acquisition and disposition, book.

2 Q. Okay. And then once the inventory is completed and then
3 you have those silencers in question, what happened next?

4 A. As soon as we had the 10 items, we left the business and
5 proceeded back to Omaha.

6 Q. Okay. Was Mr. Melton arrested at this time?

7 A. No.

8 Q. Was he told he was going to be arrested at that time?

9 A. No.

10 Q. Okay. At either time do you -- as a special agent, do you
11 generally carry a firearm?

12 A. Yes.

13 Q. On the first occasion back on August 24, were you dressed
14 in plain clothes?

15 A. Yes.

16 Q. Was your firearm concealed or out in the open?

17 A. It was concealed.

18 Q. Did you ever brandish your firearm or display it in any
19 way?

20 A. No.

21 Q. The same on the 8th, when you returned back there. Are
22 you dressed in plain clothes, or are you in some sort of
23 uniform or anything?

24 A. We're in plain clothes.

25 Q. And your firearm at that time, is it concealed, or is it

1 brandished at any time?

2 A. It was concealed.

3 MR. MOLSEN: Okay. Okay. No further questions, Your
4 Honor.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. FERDICO:

8 Q. When you were present at Leadfoot, LLC, that morning,
9 you -- you helped participate in the inspection and the
10 questioning?

11 A. On the 24th, that initial day?

12 Q. Yes.

13 A. I assisted IOI Kubert but I didn't really -- the time
14 period in which I was there, my understanding is it wasn't
15 really an inspection where I was with -- with IOI Kubert as
16 much as it was trying to just get the understanding of where
17 items were, how is business being -- occurred, stuff like that.
18 I was not involved in the reconciliation between items on the
19 floor versus paperwork versus books, no.

20 MR. FERDICO: Okay. No further questions.

21 MR. MOLSEN: No follow-up, Your Honor.

22 THE COURT: You may step down.

23 MR. MOLSEN: And I have no further evidence, Your
24 Honor.

25 THE COURT: Any evidence by the defendant? Are you

1 okay?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: All right.

4 THE WITNESS: I'm all right.

5 THE COURT: That's a -- it was apparently a big step.

6 THE WITNESS: It was bigger than I was thinking it
7 was, and it was just enough to get me into the wall to spill
8 the water.

9 THE COURT: Oh, okay. I'm glad you didn't get hurt.
10 All right. Mr. Ferdico, any questions?

11 MR. FERDICO: No, ma'am.

12 THE COURT: All right. Do you want to argue it? You
13 have 15 -- 16 minutes between the two of you.

14 MR. MOLSEN: I'll just make a really brief argument.

15 THE COURT: Okay. Go ahead.

16 MR. MOLSEN: As far as the Fourth Amendment issue
17 concerns, this comes down to basically just how you interpret
18 the statute, and so the defense's contention is in --
19 basically, under the statute there's a couple different ways in
20 which an inspection can take place. Under Section (g)(1)(A),
21 that's the section that says if there is, you know, sufficient
22 reason, the agents or the investigators may -- or the
23 inspectors may get a warrant.

24 Then there is the Subsection (B), which lays out some
25 exceptions to that, and one of the -- one of the exceptions is

1 the inspectors may also conduct an annual compliance inspection
2 no more than once a year. And I think from the testimony it's
3 pretty clear that this was a compliance inspection. The
4 testimony is that there was the initial inspection done when
5 the license was first issued, and then I think it was, what,
6 three or four years later when this comes up with no
7 inspections in the interim period.

8 So the government's -- government's argument here is that
9 this is very clearly an inspection, a compliance inspection,
10 the annual compliance inspection under the statute. That
11 statute has been held up by the Supreme Court as being
12 constitutional. There is no issue in this case. The defense's
13 argument basically is -- comes down to an argument that if the
14 inspectors have reason to believe the inspection's going to be
15 fruitful, that there are violations, that they're then required
16 to only go by Subsection (A) and get the warrant.

17 The problem with that argument is there's nothing in the
18 regulations, there's nothing in Subsection (A), and there's
19 nothing in the case law that says that requirement's there.
20 It's only the defense that says that requirement's there.

21 So in this case, say, for example, that they conducted an
22 inspection in January and everything was, you know, fine and
23 kosher and no issues were -- came up, and then two or
24 three months later they start getting reports like, hey, this
25 guy's doing things in violation of the law. They could not do

1 an annual inspection in that case, but they could follow the
2 Subsection (A) and get a warrant. That would be a perfectly
3 good example of when you might use Subsection (A).

4 But I think the law is clear according to even the cases
5 that the government cited in its brief. They can have reason
6 to believe the inspection's going to be fruitful, and there is
7 nothing legally that prevents them from relying on the annual
8 compliance inspection. And so the key -- the critical step in
9 their argument is the claim that they cannot rely on Subsection
10 (B) if they think the compliance is going to be an inspection,
11 and there's just simply nothing in the statute or the case law
12 that indicates that that's the case.

13 THE COURT: All right. Mr. Ferdico.

14 MR. FERDICO: Your Honor, we would ask for -- we
15 agree, factually, I don't think there's much dispute.
16 Obviously, we disagree with the government's legal analysis,
17 but it is technical, and we would ask for a minimum of
18 two weeks to respond to their brief, and I'm willing to --

19 THE COURT: Didn't you brief it to begin with?

20 MR. FERDICO: We briefed it but we didn't -- and then
21 the government briefed it, but we would like to file a response
22 to the government's brief.

23 THE COURT: I -- 'cause your first brief was 36
24 pages. Hang on just a second.

25 MR. FERDICO: That was with the exhibits, 101, one,

1 oh --

2 THE COURT: Right.

3 MR. FERDICO: 101 and 102, which were 24 pages total

4 so --

5 THE COURT: All right. Any objection to them having
6 a post hearing brief?

7 MR. MOLSEN: No, Your Honor.

8 THE COURT: All right. You may have two weeks to
9 file a post hearing brief, and I'm going to call it a post
10 hearing brief because it's not really a reply in this
11 particular situation.

12 So do you want a post hearing brief after their post
13 hearing brief?

14 MR. MOLSEN: If I could, Your Honor.

15 THE COURT: Okay. Seven days, would that be okay, or
16 do you want --

17 MR. MOLSEN: Yes, I think so.

18 THE COURT: Okay. So we're going to do a post
19 hearing for the defendant of 14, a post hearing for the
20 government of seven days thereafter. Anything else that we
21 need to take up at this time?

22 MR. MOLSEN: No, Your Honor. Thank you.

23 MR. KALEMKIARIAN: Two things, Judge, for
24 clarification. That's two weeks from today; so November 22nd
25 for the defense.

1 THE COURT: You didn't have anything else to do on
2 Thanksgiving, did you?

3 MR. KALEMKIARIAN: I guess I didn't realize that that
4 is Thanksgiving. Do we want to go out --

5 THE COURT: Hang on. Why don't we go with the Monday
6 after Thanksgiving? Can we go with the 26th? Would that work
7 for everyone?

8 MR. FERDICO: Yes, ma'am.

9 MR. MOLSEN: Yes, Your Honor.

10 THE COURT: All right. We'll go with the 26th, and
11 then, obviously, then, the government's would be due seven days
12 thereafter, which would be the 3rd. All right. Anything else
13 now?

14 MR. MOLSEN: No.

15 MR. KALEMKIARIAN: Judge --

16 MR. MOLSEN: Sorry.

17 MR. KALEMKIARIAN: I'm sorry.

18 MR. MOLSEN: Nothing from the government.

19 THE COURT: That was only one of your two things
20 so --

21 MR. KALEMKIARIAN: There were two things, Judge.

22 THE COURT: Yes.

23 MR. KALEMKIARIAN: On the second --

24 THE COURT: I listen.

25 MR. KALEMKIARIAN: I was made aware last night -- as

1 Your Honor is aware, we have asked for two detention hearings.
2 We have not asked for one in the last month and a half or so.
3 I was made aware of an issue with Mr. Melton's mother last
4 night. I received a letter from her and a letter from her
5 doctor in which she is requesting, due to her medical issues --
6 and I do have copies for the Court if you're -- if Your Honor
7 would like to see them. I did provide them to the government
8 this afternoon before the hearing.

9 I'm stating a request that Mr. Melton be released to her
10 to provide her assistance in her day-to-day living. In
11 addition there was a doctor's note from her physician stating
12 that it would be in her best interest to have somebody to help
13 take care of her, and she does, in her letter, explain why she
14 would like it to be Joe and not other children because of their
15 other obligations.

16 If we could take -- we have 10 minutes. I would request
17 that we take up detention today. If not, I would -- I would
18 assert on the record that this is a material condition --
19 excuse me, a material change in conditions that would
20 necessitate an additional hearing and request that we set this
21 for a hearing.

22 THE COURT: Okay. Obviously, we have only
23 10 minutes, but I haven't read the documents, and that -- and I
24 would want to do that. I don't -- I -- I don't have any
25 objection. I do think that that's a material change. Are

1 people available tomorrow to take this up?

2 MR. MOLSEN: Yes, Your Honor.

3 MR. KALEMKIARIAN: At what time, Judge?

4 THE COURT: I have -- hang on just a second here.

5 Could we do it at 10:30?

6 MR. KALEMKIARIAN: I'm going to most likely be in --
7 I have a hearing in Omaha at 10:30, but I could probably get
8 coverage over here. Can we set it for 10:30 for now?

9 THE COURT: You're in Omaha at 10:30; so then you
10 would be -- how long will you be there?

11 MR. KALEMKIARIAN: I was planning on going to jail to
12 see another one of my clients after that.

13 THE COURT: Okay.

14 MR. KALEMKIARIAN: I can make something work, though,
15 Judge. If we want to set it at 10:30, I can probably get
16 coverage. If not, I'll -- somehow I can be back after that,
17 then.

18 THE COURT: Okay. So when are you back in Lincoln?

19 MR. KALEMKIARIAN: I can be back at Your Honor's
20 request. I think the hearing in Omaha will last probably a
21 half an hour; so I could be back most likely by noon if Your
22 Honor requested.

23 THE COURT: Do we want to do it at -- I have
24 available at one o'clock. We want to do it at one o'clock?

25 MR. MOLSEN: Yes, Your Honor. That works for me.

1 THE COURT: One o'clock?

2 MR. KALEMKIARIAN: That will work fine for me.

3 THE COURT: And then you can do what you need to do
4 in Omaha. Okay. One o'clock tomorrow afternoon we'll have
5 a -- but what I need from you, Mr. Kalemkiarian, is I need to
6 see the documents so that I -- and if you can just shoot them
7 to me by an email, that's perfectly fine. Make sure the
8 government sees them as well.

9 MR. KALEMKIARIAN: I can do -- I can do a motion for
10 detention hearing. I'd prefer to email you the documents and
11 not include that as an attachment. Is that okay?

12 THE COURT: Perfectly fine.

13 MR. KALEMKIARIAN: All right.

14 THE COURT: All right. We are in recess.

15 MR. KALEMKIARIAN: Thank you, Your Honor.

16 (3:23 p.m.-- Adjourned.)

17

18 * * * * *

19

20 I, Lisa G. Grimminger, certify that the foregoing is a
21 correct transcription to the best of my ability from the
22 digital recording of the proceedings held in the above-entitled
23 matter.

24

25 /s/Lisa G. Grimminger November 30, 2018
Lisa G. Grimminger, RDR, CRR, CRC Date

I-N-D-E-X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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WITNESSES:FOR THE PLAINTIFF:

Greg Kubert	5	52	68	71, 72
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